

(2) The transferor subject to section 2519 may execute a written waiver of the right of recovery arising under section 2207A before that right of recovery becomes unenforceable. If a waiver is executed, the transfer of the unrecovered amounts by the transferor is considered to be made on the later of—

(i) The date of the valid and irrevocable waiver rendering the right of recovery no longer enforceable; or

(ii) The date of the payment of the tax by the transferor.

(c) *Amount of gift tax attributable to all properties.* The amount of Federal gift tax attributable to all properties includible in the total amount of gifts under section 2519 made during the calendar year is the amount by which the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which has been paid, exceeds the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which would have been paid if the value of the properties includible in the total amount of gifts by reason of section 2519 had not been included.

(d) *Amount of gift tax attributable to a particular property.* A person's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (c) of this section multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of section 2519, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reason of section 2519, less any deductions allowed with respect to those properties.

(e) *Person receiving the property.* If the property is in a trust at the time of the transfer, the *person receiving the property* is the trustee, and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (e) does not affect the right, if any, under local

law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(f) *Example.* The following example illustrates the application of paragraphs (a) through (e) of this section.

Example. D created an inter vivos trust during 1994 with certain income producing assets valued at \$1,000,000. The trust provides that all income is payable to D's wife, S, for S's life, with the remainder at S's death to be divided equally among their four children. In computing taxable gifts during calendar year 1994, D deducted, pursuant to section 2523(f), \$1,000,000 from the total amount of gifts made. In addition, assume that S received no other transfers from D and that S made a gift during 1996 of the entire life interest to one of the children, at which time the value of trust assets was \$1,080,000 and the value of S's life interest was \$400,000. Although the entire value of the trust assets (\$1,080,000) is, pursuant to sections 2511 and 2519, included in the total amount of S's gifts for calendar year 1996, S is only entitled to reimbursement for the Federal gift tax attributable to the value of the remainder interest, that is, the Federal gift tax attributable to \$680,000 (\$1,080,000 less \$400,000). The Federal gift tax attributable to \$680,000 is equal to the amount by which the total Federal gift tax (including penalties and interest) paid for the calendar year exceeds the federal gift tax (including penalties and interest) that would have been paid if the total amount of gifts during 1996 had been reduced by \$680,000. That amount of tax may be recovered by S from the trust.

[T.D. 8522, 59 FR 9655, Mar. 1, 1994, as amended by T.D. 9077, 68 FR 42595, July 18, 2003]

§ 25.2207A-2 Effective date.

The provisions of § 25.2207A-1 are effective with respect to dispositions made after March 1, 1994. With respect to gifts made on or before such date, the donor may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 25.2207A-1 (as well as project LR-211-76, 1984-1 C.B., page 598, see § 601.601(d)(2)(ii)(b) of this chapter), are considered a reasonable interpretation of the statutory provisions.

[T.D. 8522, 59 FR 9656, Mar. 1, 1994]

§ 25.2501-1 Imposition of tax.

(a) *In general.* (1) The tax applies to all transfers by gift of property, whether situated, by an individual who is a